

UNITED STATES OF AMERICA) NO. 3:CR-09-00028
)
 v.)
)
 MICHAEL T. CONAHAN and)
 MARK A. CIAVARELLA, JR.,)
)
 Defendants.)

STATEMENTS TO THE COURT BY GOVERNMENT COUNSEL
IN CONNECTION WITH GUILTY PLEA COLLOQUY;
ACKNOWLEDGMENT BY DEFENDANTS

A. PRELIMINARY STATEMENT

Your Honor, the evidence in this case arises from a lengthy investigation conducted by the FBI and the Internal Revenue Service. For purposes of today's proceeding, I will reference only sufficient evidence to establish all of the essential elements of the offenses charged.

Before coming to court today, the defendants had the opportunity to review the statement of offense conduct I am about to read to the court. It is my understanding that, during today's proceeding, the defendants will acknowledge the accuracy of the proffered factual evidence, will acknowledge that -- if the case had gone to trial -- the evidence would have established all of the elements of the offenses charged beyond a reasonable doubt, and will also acknowledge that they are guilty of the offenses charged in the information.

However, as is common in criminal cases, the government and the defendants are not in complete agreement at this time on all

of the facts alleged in the Information. The parties understand that the Probation Office will conduct a presentence investigation and will propose findings of facts to the Court in a Presentence Investigation Report and that the proposed findings of fact may include facts with which the government and/or the defendants may disagree. As to any disputed material facts which remain at the time of sentencing, the parties agree to be bound by findings of fact to be made by Your Honor. The parties agree and understand that any factual findings Your Honor may make will be made utilizing the "preponderance of the evidence" standard.

In addition, the parties have not reached agreement on the amount of restitution to be made by the defendants and the parties have agreed to be bound by the findings of the Court with regard to restitution.

B. STATEMENT OF OFFENSE CONDUCT

If this case had gone to trial, the government would have presented the testimony of witnesses and would have presented documentary evidence, including documents obtained through issuance of grand jury subpoenas and from public records. The testimony and other evidence would have proven the following, beyond a reasonable doubt:

During the time period alleged in the Information, Michael T. Conahan and Mark A. Ciavarella, Jr. were judges of the Court of Common Pleas for Luzerne County, Pennsylvania. Between

approximately January of 2002 and January of 2007, Judge Conahan served as President Judge for Luzerne County. Between approximately 1996 and June of 2008, Judge Ciavarella served as Judge of the Juvenile Court for Luzerne County. In approximately January of 2007, Judge Ciavarella was named President Judge for Luzerne County.

As judges of the Court of Common Pleas, Judges Conahan and Ciavarella owed a fiduciary duty to the citizens of the Commonwealth of Pennsylvania. One source of the fiduciary duty owed by the judges was imposed by Pennsylvania constitutional law, including, Article 5, §§ 17(b) and 17(c) of the Pennsylvania Constitution.

Another source, among others, of the fiduciary duty owed by the judges, independent of statutory law, arose from the judges' positions as judges of the Court of Common Pleas, including requirements of the Pennsylvania Code of Judicial Conduct and Administrative Orders of the Pennsylvania Supreme Court regarding matters related to Judges of the Court of Common Pleas.

As judges, Michael T. Conahan and Mark A. Ciavarella, Jr. owed a fiduciary duty to the public, which included, but was not limited to, the duties to refrain from conduct that constitutes a conflict of interest, to recuse themselves from matters in which they have a conflict of interest, and to file a truthful and complete annual statement of financial interests with the

Administrative Office of the Pennsylvania Courts, reporting the sources of all income, direct or indirect. Part of the fiduciary duty owed by each judge included the duty arising from his position as judge to disclose material information relevant to his ability to engage in impartial, discretionary decision-making.

From in or about June, 2000, the exact date being unknown, to on or about April 30, 2007, Judges Conahan and Ciavarella had an understanding among themselves that they would engage in a material scheme to defraud the citizens of the Commonwealth of Pennsylvania and to deprive those citizens of their right to the honest services of Judges Conahan and Ciavarella as judges of the Court of Common Pleas for Luzerne County, performed free from deceit, self-enrichment, concealment, and conflict of interest.

If this case had gone to trial, the evidence would have shown that, between approximately January of 2003 and January 1, 2007, Judges Conahan and Ciavarella accepted a total of more than \$2,600,000 from persons identified in the Information as Participant #1 and Participant #2.

The evidence would have shown that more than \$1,700,000 was paid to the judges between January of 2003 and February of 2006 by Participant #2 after the company with which Participant #2 was affiliated received payment from PA Child Care, LLC and Western PA Child Care, LLC for the construction of two juvenile detention

facilities and for the construction of an addition to one of those facilities. The trial evidence would have shown that more than \$580,000 was paid to the judges between on or about February of 2003 and on or about November of 2006 by Participant #1, one of the owners of PA Child Care, LLC and Western PA Child Care, LLC, after juvenile detention facilities owned by PA Child Care, LLC and Western PA Child Care, LLC began operating and accepting placement of juvenile offenders who were ordered detained by the Court of Common Pleas for Luzerne County.

The trial evidence would have shown that, in order to hide the fact that they received money from Participant #1 and Participant #2, Judges Conahan and Ciavarella, among other acts, caused some of that money to be wire transferred to persons or business entities other than the judges.

Among other wire transfers, the testimonial and documentary evidence would have shown that: (1) on January 21, 2003, the judges directed that an electronic funds transfer of \$610,000 be transferred from an account under the control of Participant #2 to an attorney trust account to be held in trust for the judges; (2) on July 12, 2004, the judges directed that an electronic funds transfer of \$120,000 be transferred from an account of Vision Holdings, Inc., a business controlled by Participant #1 to an account of the Pinnacle Group of Jupiter, LLC, a business entity owned jointly by close relatives of the judges but

controlled by the judges; (3) on September 23, 2004, the judges directed that an electronic funds transfer of \$100,000 be transferred from an account of Vision Holdings, Inc. to an account of Pinnacle Group of Jupiter, LLC.; (4) on July 15, 2005, the judges directed that an electronic funds transfer of \$1,000,000 be transferred from an account under the control of Participant #2 to an account of Pinnacle Group of Jupiter, LLC; and, (5) on February 3, 2006, the judges directed that an electronic funds transfer of \$150,000 be transferred from an account under the control of Participant #2 to an account of Pinnacle Group of Jupiter, LLC.

At trial, the government would have presented testimonial and documentary proof of those wire transfers, and others. The government would have also presented the testimony of bank officials to prove that the wire transfers directed by the defendants caused wire transfers to be made across state lines. For example, with regard to the \$1,000,000 wire transfer from a bank account under the control of Participant #2 on July 15, 2005, the government would have introduced testimony of a bank official who would have testified that the wire transfer from the account of Participant #2 caused a wire to be sent by Participant #2's bank in Pennsylvania to the Federal Reserve Bank of Boston in Massachusetts and also to Participant #2's bank's wire room located in Rhode Island.

The trial evidence would have shown that, during the time period the judges agreed to accept and accepted the more than \$2,600,000 from Participant #1 and Participant #2 related to the construction and operation of juvenile detention facilities owned by PA Child Care, LLC and Western PA Child Care, LLC, the judges acted as judges of the Court of Common Pleas for Luzerne County with discretionary decision-making authority in multiple matters related to PA Child Care and Western PA Child Care, LLC without recusing themselves or disclosing to the parties their material conflict of interest and their material financial relationship with Participant #1, who was an owner of PA Child Care, LLC, and Western PA Child Care, and with Participant #2, who was involved in the construction of the juvenile detention facilities owned and operated by PA Child Care, LLC and Western PA Child Care, LLC.

For example, with regard to Judge Ciavarella, the evidence would have shown that, beginning in approximately February of 2003, when construction of the PA Child Care, LLC juvenile detention facility in Luzerne County was completed, and continuing through April 30, 2007, Judge Ciavarella, in his capacity as a juvenile court judge, presided over numerous juvenile court matters in Luzerne County in which he had discretionary decision-making authority and in which the potential existed for juvenile offenders to be ordered detained

at detention facilities owned by PA Child Care, LLC and Western PA Child Care, LLC. The juvenile court matters over which Judge Ciavarella presided included, but were not limited to, proceedings relating to pre-hearing detention of juveniles, proceedings relating to juvenile disposition, and proceedings relating to revocation of juvenile probation. In fact, testimony and court records would have shown that numerous juvenile offenders ordered detained by Judge Ciavarella during this time period were, in fact, lodged at facilities owned and operated by PA Child Care, LLC and Western PA Child Care, LLC.

With regard to Judge Conahan, the trial evidence would have shown that on or about January 29, 2002, Judge Conahan, acting in his capacity as President Judge of Luzerne County, signed a "Placement Guarantee Agreement" between PA Child Care and the Court of Common Pleas for Luzerne County to house juvenile offenders at the PA Child Care facility. The "Placement Guarantee Agreement" provided that the Court of Common Pleas for Luzerne County would pay PA Child Care the annual "Rental Installment" sum of \$1,314,000 and stipulated that "[t]he obligation of the Court to make payment of the Rental Installments shall be absolute and unconditional."

Similarly, in or about December, 2002, Judge Conahan, acting in his capacity as President Judge of Luzerne County, took official action to remove funding from the Luzerne County

judicial budget for the Luzerne County juvenile detention facility, effectively closing a county-owned youth detention center.

Additionally, in approximately December of 2004, PA Child Care, LLC filed a lawsuit listing as defendants an auditor of the Pennsylvania Department of Public Welfare, the regional director of the Pennsylvania Office of Children, Youth and Families, and the Luzerne County Controller. The lawsuit filed by PA Child Care, LLC sought injunctive relief against the parties named as defendants and sought an order sealing the record. On December 17, 2004, before any defendants had an opportunity to respond to the lawsuit, Judge Conahan summarily granted PA Child Care, LLC's motions seeking injunctive relief and motion to seal the record.

The evidence at trial would have shown that, in none of the aforementioned examples of matters related to PA Child Care, LLC and Western PA Child Care, LLC did Judge Ciavarella or Judge Conahan recuse himself or disclose to the parties his material conflict of interest and his material financial relationship with Participant #1, who was an owner of PA Child Care, LLC, and Western PA Child Care, LLC, and with Participant #2, who was involved in the construction of the juvenile detention facilities owned and operated by PA Child Care, LLC and Western PA Child Care, LLC.

As part of the scheme devised by Judge Conahan and Judge

Ciavarella to defraud the citizens of the Commonwealth of Pennsylvania of their right to the honest services of the judges, materially false records were prepared to hide their receipt of money. For example, in order to conceal monies paid to the judges by Participant #2, multiple written "Registration and Commission Agreements" were prepared which falsely purported to be agreements for broker's fees to be paid to Participant #1. In fact, however, trial testimony and financial records would have indicated that the monies identified in the fraudulent agreements were intended by all parties to be paid to the judges.

To further conceal the monies paid by Participant #2 to Judge Conahan and Judge Ciavarella during the course of the scheme to defraud, testimonial and documentary evidence would have shown that the monies were sometimes transferred to business entities under the control of the judges, such as Beverage Marketing of PA, Inc., under the control of Judge Conahan, and Pinnacle Group of Jupiter, LLC, which was a business entity owned by relatives of the judges but controlled by the judges themselves. The government would have presented documentary evidence at trial to prove that false entries were made in the books and records of Beverage Marketing of PA, Inc. and Pinnacle Group of Jupiter, LLC, to mask the source and/or purpose of these monies.

Beginning in approximately February of 2003, when

construction of the PA Child Care juvenile detention facility was completed, and on or about January 1, 2007, Judge Conahan and Judge Ciavarella received payments of hundreds of thousands of dollars from Participant #1, who was an owner of PA Child Care, LLC and Western PA Child Care, LLC. The judges also took steps to conceal and disguise the nature and source of the monies paid to them by Participant #1.

Some of the payments from Participant #1 were made by checks drawn on one or more bank accounts under the control of Participant #1 and were made payable to the Pinnacle Group of Jupiter, LLC. The payments included, but were not necessarily limited to, the following: \$18,000 paid on or about January 13, 2004; \$52,000 paid on or about January 13, 2004; \$78,000 paid on or about February 15, 2004; \$75,000 paid on or about February 15, 2004; \$47,000 paid on or about February 15, 2004; \$75,000 paid on or about April 30, 2004; and \$25,000 paid on or about April 30, 2004.

To conceal the payments to the judges, the judges directed that false entries be made in the books and records of Pinnacle Group of Jupiter, LLC. These false entries were made by the judges not only as part of the honest services fraud scheme but also to defraud the Internal Revenue Service by, for example, falsely characterizing some of the income as rental income in order to receive favorable tax treatment.

At trial, the government would have introduced federal income tax returns relating to tax years 2003 through 2006 filed with the Internal Revenue Service and signed by Judges Conahan and Ciavarella which were materially false to the extent that they mischaracterized income the judges received from Participant #1 and Participant #2. The evidence would have demonstrated that, for tax years 2003 through 2006, the tax loss to the government for Judge Conahan's part in the scheme was material. The evidence would have demonstrated that, for tax years 2003 through 2006, the tax loss to the government for Judge Ciavarella's part in the scheme was material.

The evidence would have shown that, as part of the scheme to defraud the citizens of Pennsylvania of their right to the honest services of the judges, Judge Conahan and Judge Ciavarella filed materially false annual statements of financial interests with the Administrative Office of the Pennsylvania Courts in which they failed to disclose the source of the more than \$2,600,000 income they received and in which they failed to disclose their financial relationship with Participant #1, who was an owner of PA Child Care, LLC, and Western PA Child Care, and with Participant #2, who was involved in the construction of the juvenile detention facilities owned and operated by PA Child Care, LLC and Western PA Child Care, LLC.

At trial, the government would have introduced the

materially false financial disclosure statements filed with the Pennsylvania Administrative Office of the Courts by Judge Conahan on or about April, 2004 (the statement of financial interests for calendar year 2003); March, 2005 (the statement of financial interests for calendar year 2004); February, 2006 (the statement of financial interests for calendar year 2005); and, April, 2007 (the statement of financial interests for calendar year 2006).

At trial, the government would also have introduced the materially false financial disclosure statements filed with the Pennsylvania Administrative Office of the Courts by Judge Ciavarella on or about April, 2004 (the statement of financial interests for calendar year 2003); March, 2005 (the statement of financial interests for calendar year 2004); April, 2006 (the statement of financial interests for calendar year 2005); and, March, 2007 (the statement of financial interests for calendar year 2006).

Your Honor, that is some of the evidence the government would have presented if the case had gone to trial. While it is not all of the evidence, the government suggests it is sufficient for today's purpose to establish each defendant's commission of each element of each offense charged.

As to Count 1 of the Information, charging Michael Conahan and Mark A. Ciavarella with honest services wire fraud, in violation of Title 18, United States Code, section 1343, the

proffered evidence demonstrates that Judge Conahan and Judge Ciavarella: (1) devised a scheme to defraud the citizens of the Commonwealth of Pennsylvania of their right to the honest services of the judges; (2) acted with the intent to defraud; and, (3) in furthering and carrying out the scheme, caused the transmission of a wire communication, across state lines and in interstate commerce.

As to Count 2 of the Information, charging Michael Conahan and Mark A. Ciavarella with conspiracy to defraud the United States, in violation of Title 18, United States Code, section 371, the proffered evidence demonstrates that: (1) Judge Conahan and Judge Ciavarella conspired to defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment and collection of income taxes; (2) Judge Conahan and Judge Ciavarella each knowingly and intentionally entered into this unlawful conspiracy, knowing of its objective to defraud the United States and intending to join together to achieve that objective; and, (3) both judges committed overt acts during the lifetime of the conspiracy, including the filing of multiple fraudulent federal income tax returns, in order to further the unlawful objective of the conspiracy.

C. ACKNOWLEDGMENT BY DEFENDANTS

I have read the foregoing "Statements to the Court By Government Counsel In Connection With Guilty Plea Colloquy." I understand that these statements, including a "Preliminary Statement" and a "Statement of Offense Conduct" will be read in open court at the time of my guilty plea colloquy.

I have discussed this matter with my attorney and I agree with the information contained in the Preliminary Statement and Statement of Offense Conduct. I further agree that, if this case had gone to trial, the government could have proven beyond a reasonable doubt all matters averred in the Statement of Offense Conduct and each element of the offenses with which I am charged.

Dated: 2/12/09

MT-Conah
Michael T. Conahan

Dated: 2/12/09

Mark A Ciavarella Jr
Mark A. Ciavarella Jr.